IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 178 OF 2005

Nemchand Shamji Furia. ... Appellant.
Versus.
The Municipal Corporation of
Greater Bombay. ... Respondents.

Shri H.S.Shreepad Murthy for the Appellant.

Ms.Geeta Joglekar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 14th March, 2005.

P.C.:

1. Admit. The Respondents waive service.

2. The challenge in this Appeal from Order filed by the original Plaintiff is to the order dated 14th January 2005. The operative part of the said impugned order reads thus:

> "I. The relevant officer of the defendants shall consider reply of the plaintiff dated 20-02-1999 and pass his order thereon.
>
> II. The plaintiff shall communicate this order to the concerned officer of the defendants who is required to pass the order on the reply of the plaintiff.

III. The defendants shall not demolish the suit structure until one week after that order is served upon the plaintiff.

IV. N/M disposed of accordingly."

The operative part of the order indicates that the concerned officer of the Respondent-Corporation has been directed to consider the reply filed by the Appellant-Plaintiff on 20th February 1999 and pass order thereon. It is also directed that the Respondent-Corproation shall not demolish the suit structure one week after the order is served on the Appellant.

3. Shri Murthy appearing for the Appellant has made a very limited grievance. He submitted that in accordance with the law laid down by this Court the concerned Officer of the Respondent was under an obligation to pass an order after considering the reply filed by the Appellant to the notice under section 314 of the Bombay Municipal Corporation Act 1888 and accordingly a direction has been given by the learned trial Judge to the concerned officer to pass an order. He submitted that while giving the said direction certain observations are made in paragraphs 10 and 11 of the impugned Judgment and order which indicate that the contentions raised by the Appellant on merits are not

correct. He submitted that while directing the concerned officer of the Respondent-Corporation to pass an order after considering the reply dated 20th February 1999, no observation ought to have been made by the learned trial Judge which will affect the merit of the case of the Appellant and may influence the concerned officer.

4. The learned Counsel appearing for the Respondent-Corporation states that she has not received any instructions from the concerned officer.

5. Hearing of the Appeal was adjourned on 7th February 2005 to enable the learned Advocate for the Respondent-Corporation to take instructions and this Court directed the concerned Officer of the Respondent-Corporation not to pass order.

6. When the trial Court has directed the concerned Officer of the Respondent-Corporation to pass an order, it is obvious that the order will have to be passed on its own merit. While passing the order, the Officer concerned will not be influenced by the prima facie observations made in paragraphs 10 and 11 of the impugned Judgment and order.

7. Hence the Appeal is disposed of by the following order:

(i) The concerned Officers of the Respondent-Corporation will pass order as per the directions given by the trial Court within a period of four weeks from today. It will be open to the Appellant-Plaintiff to produce additional reply and/or additional documents before the concerned officer if it is permissible to do so in accordance with the law.

(ii) While passing the order, the concerned Officer of the Respondent-Corporation will not be influenced by the observations made in the impugned Judgment and Order and in particular in paragraphs 10 and 11 thereof. The concerned Officer will pass order on its own merits.

(iii) Subject to the aforesaid observations, the impugned order is confirmed. The Appeal is disposed of accordingly. No order as to costs.

(iv) Parties and the concerned authority to act on an authenticated copy of this order.

Judge.